APPENDIX A

1982 TERM
To wit: June 30, 1982

No. 82-768

THE STATE OF OHIO
City of Columbus.

VICTORY BAPTIST TEMPLE, INC.,

Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO ET AL.,

Appellees.

MOTION FOR AN ORDER DIRECTING
THE COURT OF APPEALS

For Lorain County

TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:

Motion Fee, $20.00 paid by Gibbs & Craze.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal of the Court this_____day of _____19_____

_____ *Clerk*

_____ *Deputy*

APPENDIX B

IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT

State of Ohio, County of Lorain, ss:

C. A. NO. 3262

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff-Appellant,

vs.

INDUSTRIAL COMMISSION OF OHIO, et al.,

Defendants-Appellees.

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT COUNTY OF LORAIN, OHIO

CASE NO. 84897 79

DECISION AND JOURNAL ENTRY

Dated: March 24, 1982

This cause was heard January 28, 1982, upon the record in the trial court, and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

QUILLIN, J.

Victory Baptist Temple, Inc., plaintiff-appellant, appeals a judgment of the Court of Common Pleas that the Ohio Workers' Compensation Laws as applied to the appellant are constitutional. We affirm.

The stipulations and affidavits of the parties reveal the following facts. The defendants-appellees, the Indus-

trial Commission of Ohio (Commission) and the Bureau of Workers' Compensation (Bureau) are duly authorized agencies of the State of Ohio which are employed to administer the Workers' Compensation Law. R. C. Chapter 4123.

The plaintiff-appellant, Victory Baptist Temple, Inc. (Victory Baptist or Church), is a non-profit corporation organized under the laws of the State of Ohio which operates a church and a Christian day school in Elyria, Ohio. The church school is not separately incorporated. In addition to volunteer help, Victory Baptist has persons who are regularly employed to operate the church and the church day school and who receive financial remuneration for their services.

At appellant's request, appellees conducted a rating inspection and assessed premiums pursuant to the Workers' Compensation Law for those persons who receive remuneration from the church. The Commission notified the church that it must submit the payroll report and remit the assessed premiums to the Commission. Further, the church was informed that if it did not comply with the provisions of the law, enforcement proceedings would be commenced under R. C. 4123.37 and 4123.99 (C).

Victory Baptist refused to submit to these demands on the grounds that the law interfered with the sincerely held religious beliefs of the church and its members. The appellant claims it cannot, in good conscience, contribute church monies intended solely for expenditures for religious purposes to the Workers' Compensation Fund. It asserts that to do so would be a sin. Rather, the church

proposes to accomplish the goals of the law by voluntarily caring for their ill or disabled employees.

Appellant brought this action in the court below requesting a declaratory judgment and injunctive relief from the application of the law. Each party filed a motion for summary judgment pursuant to Civ. R. 56. Based on the motions and the accompanying stipulations and affidavits, the trial court issued an order and opinion granting appellees' motion and denying that of appellant. The lower court held: (1) that the state's interest in insuring that fair compensation for an employee injured or killed in the course of his employment is a compelling interest, (2) that R. C. 4123.01 (A) and (B) include churches and their paid employees, (3) that application of the law to Victory Baptist does not violate the freedoms of religion guaranteed in the United States and Ohio Constitutions, and (4) that the provisions of the law itself are the least burdensome methods of accomplishing the compelling state purpose.

ASSIGNMENT OF ERROR 2

> "Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that Victory Baptist is an 'employer' within the meaning of the Workers' Compensation Act and that the protection of its clerical and educational 'employees' is properly governable by the Act."

Relying on the general principle of construing statutes to avoid unnecessary constitutional decisions, the

United States Supreme Court in NLRB v. Catholic Bishop of Chicago (1979), 440 U. S. 490, 501 held:

"• • •

> "The values enshrined in the First Amendment plainly rank high 'in the scale of our national values.' In keeping with the Court's prudential policy it is incumbent on us to determine whether the Board's exercise of its jurisdiction here would give rise to serious constitutional questions. If so, we must first identify 'the affirmative intention of the Congress clearly expressed' before concluding that the Act grants jurisdiction."

Thus, appellant argues unless the General Assembly expressly includes religious institutions within its definition of "employer" (R. C. 4123.01 (B)) and "employee" (R. C. 4123.01 (A)), the law must be construed to exempt churches and their ministries from coverage. We do not agree.

Congress did not specifically include church schools in its grant of jurisdiction to the National Labor Relations Board. However, this lack of an express inclusion was not dispositive of the issue before the high court. Rather, the court in Catholic Bishop of Chicago, supra, examined the language and the legislative history of the National Labor Relations Act to determine Congressional intent. In the instant case the language and legislative history admits to no other conclusion than that the General Assembly intended to include churches and their employees within the protection of the Workers' Compensation Law.

Section 35, Article II, of the Ohio Constitution states:

> "For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed estab-

lishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. * * *."

Because its purpose is remedial, the Act must be liberally construed. R. C. 1.11. See also, R. C. 4123.95.

R. C. 4123.01 (A) states in relevant part:

"As used in Chapter 4123. of the Revised Code:

"(A) 'Employee,' 'workman,' or 'operative' means:

"* * *.

"(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, * * *.

"(B) 'Employer' means:

"* * *.

"(2) Every person, firm, and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, * * *."

Victory Baptist admits that it is a private corporation and that persons are regularly employed to operate the church and church day school. These people are paid money by the church for performing these services. Thus, the persons receiving pay for operating the church and school fall within the plain language of the statute's definition of employees. Likewise, the church comes within the statutory definition of an employer.

The Workers' Compensation Law has been characterized by the broadest possible coverage with frequent amendments to insure that no class of employers or employees was unintentionally excluded. If the legislature had intended to exclude religious institutions, it had ample opportunity to do so. We believe that the legislature intended for employees of religious institutions to come under the protection of the Act.

ASSIGNMENT OF ERROR 4

"Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the application of O. R. C. Chapters 4121 and 4123 of the Revised Code to Victory Baptist is not violative of the First Amendment."

Appellant's contention that the compliance abridges its right to freely exercise its religion is controlled by United States v. Lee (1982), — U. S. —, 50 Law Week 4201. In Lee, the appellee, a member of the Old Amish faith, contended that, because the payment of social security taxes violated the tenents of his religion, compulsory participation in the social security system interfered with his free exercise rights. The court agreed that the clash between appellee's religious obligation and his civic obligation was irreconcilable but said:

"• • •

"The conclusion that there is a conflict between the Amish faith and the obligations imposed by the social security system is only the beginning, however, and not the end of the inquiry. Not all burdens on religion are unconstitutional. See, e. g., Prince v. Massachusetts, 321 U. S. 158 (1944); Reynolds v. United States, 98 U. S. 145 (1879). The state may justify a

> limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest. Thomas, supra; Wisconsin v. Yoder, 406 U. S. 205 (1972); Gillette v. United States, 401 U. S. 437 (1971); Sherbert v. Verner, 374 U. S. 398 (1963)."
>
> "• • •." Id. at 4203.

Finding that the social security system serves the public interest by providing a comprehensive, nationwide insurance system with a variety of benefits available to all participants, the court held that:

> "• • • the government's interest in assuring mandatory and continuous participation in and contribution to the social security system is very high."
>
> "• • •." Id.

The court then considered whether accommodating the Amish belief would unduly interfere with the fulfillment of the governmental interest and found:

> "• • • Because the broad public interest in maintaining a sound tax system is of such a high order, religious belief in conflict with the payment of taxes affords no basis for resisting the tax."
>
> "• • •." Id. at 4204.

Assessments pursuant to R. C. Chapter 4123 are analogous to the mandatory contributions required by the Social Security Act. In the instant case, the state has an "overriding governmental interest" in compensating workers and their dependents for death, occupational disease, and injury occurring during the course of employment. To accomplish this purpose, the state has enacted comprehensive legislation creating a system which requires support by mandatory contributions by covered employers. Widespread voluntary coverage would undermine the

soundness of the program and be difficult, if not impossible, to administer with the myriad of exceptions flowing from a wide variety of religious beliefs. The assessments imposed on employers to support the system is uniformly applicable to all, except as the General Assembly provides explicitly otherwise. Thus, we find no constitutionally required exemption for appellant from the operation of the Workers' Compensation Act.

ASSIGNMENTS OF ERROR

"1. Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that O. R. C. Chapters 4121 and 4123 apply to Victory Baptist.

• • •

"3. Upon consideration of the evidence in support of and in opposition to the Industrial Commission's Motion for Summary Judgment, the lower court erred in finding that the protections afforded to workers at Victory Baptist under the Church's Scriptural duty to aid one another in time of need due to accident or illness is 'independable (sic) and illusory.'"

In Lee, supra, the appellee demonstrated the Amish capacity to care for their own. However, despite the fact the Amish make sufficient provision for their dependent members the high court was not persuaded to exempt the appellee from paying social security assessments. In the instant case, Victory Baptist is within the coverage of the Workers' Compensation Act, even though it would aid its workers in time of illness or injury.

There being no genuine issue of material fact between the parties, the trial court properly granted appellee's motion for summary judgment pursuant to Civ. R. 56 (C).

The judgment is affirmed.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the County of Lorain Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22 (E).

Costs taxed to appellant.

Exceptions.

/s/ Edward I. Mahoney
Presiding Judge for the Court

MAHONEY, P. J.
BELL, J.
CONCUR

APPEARANCES:

CHARLES E. CRAZE, Attorney at Law, 6929 W. 130th St., Suite 600, Cleveland, OH 44130 for Plaintiff.

WILLIAM J. BROWN, Attorney General, State Office Tower, 30 E. Broad St., Columbus, OH 43215 for Defendants.

APPENDIX C

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

Case No. 84897-79

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff,

vs.

INDUSTRIAL COMMISSION OF OHIO, et al.,

Defendants.

OPINION

This case is before the Court on Stipulations of Fact and Cross Motions for Summary Judgment by plaintiff, Victory Baptist Temple, Inc., and defendants, Industrial Commission of Ohio and its Administrator.

In keeping with the tenor of the briefs, it has to be observed that this Opinion is being written by one of Caesar's employees.

Plaintiff alleges the Worker's Compensation Law is inapplicable to it because of a lack of "clear legislative intent" to place clerical and educational employees in the same benefit status as "industrial" employees. The Court, however, must recognize that employees, regardless of their functions, are subject to disabling injuries in their employment and that any differentiation between clerical or educational employees and industrial employees is (sic) unwarranted in view of the wording and intent of the Act to protect "workers and their dependents".

While plaintiff could, to some degree, limit its involvement with the State by becoming "self-insured" under the

Act, it has not done so. Rather, it argues its members have a "scriptural duty and privilege to help one another in time of need so that none of our people will be without food, clothing, shelter or other essentials due to accident or illness. Romans 12:13" and that allowing the members to voluntarily carry out the duty is the least burdensome method of protecting the health and safety of its workers. While such behavior is admirable and to be encouraged, it is so voluntary that if allowed to be the sole method of protection, it could become so independable and illusory as to comprise no protection whatsoever. Such a possibility is precisely one of the reasons the Act was developed and it has repeatedly been declared to be a constitutional, reasonable and valid exercise of legislative power to protect the public health, welfare and safety. *State v. Creamer*, 85 O. St. 349. The Court finds plaintiff is an "employer" within the meaning of the Act and that the protection of its clerical and educational "employees" is properly governable by the Act.

The plaintiff further argues that application of the Act to it is unconstitutional in that it would or could result in excessive "entanglement" between the State and plaintiff as a religious organization. The Court finds this argument also without merit. The Act does not advance or inhibit religion and insures only that an employee injured in the course of employment is fairly and equitably compensated. As has been previously found, the State does have a compelling interest in so protecting employees. History, since the enactment of the Act in 1912, does not reflect that interference, intrusion or control of religious organizations has resulted from participation in

the Act's requirements and benefits. Indeed, plaintiff's own participation did not reflect such intrusions.

In summary, the arguments of plaintiff, though learned and eloquent, are not persuasive. The Court finds O. R. C. Chapters 4121 and 4123 do apply to plaintiff and its clerical and educational employees. The Court further finds such application is not violative of the First Amendment. Accordingly, plaintiff's Motion for Summary Judgment is denied while defendant's Motion is granted. Costs to plaintiff.

/s/ Adrian F. Betleski, Judge

copies to:

Charles E. Craze, 6929 W. 130th St., Suite 600, Cleveland, OH 44130

Bernard C. Fox, Jr., Asst. AG, State Office Tower, 30 E. Broad St., Columbus 43215

APPENDIX D

COURT OF COMMON PLEAS
Lorain County, Ohio
Natalie B. Neeson, Clerk

Case No. 84897

VICTORY BAPTIST TEMPLE, INC.,

Plaintiff,

vs.

INDUSTRIAL COMM. OF OHIO, et al.,

Defendant.

10/2/81

The Court has reviewed the Stipulations of Fact and Cross Motions for Summary Judgment and finds that Chapters 4121 and 4123 O. R. C. do apply and are not violative of the First Amendment. Accordingly, Plaintiff's Motion for Summary Judgment is denied and defendant's Motion is granted. Costs to plaintiff. See Opinion.

/s/ Adrian F. Betleski, Judge

APPENDIX E

Abundant Life Baptist Church
Box 302
West Carrollton, Ohio 45449

Apostolic Gospel Church
1778 Grange Hall
Dayton, Ohio 45432

Apostolic Lighthouse Church
2221 Harshman Road
Dayton, Ohio 45424

Bantam Wesleyan Holiness Church
2295 Hillcrest
Amelia, Ohio 45102

Baptist Bible Church
6719 State Rt. 225
Ravenna, Ohio 44266

Belfast Baptist Church
6009 Belfast Road
Goshen, Ohio 45122

Berean Baptist Church
4058 Starr Avenue
Oregon, Ohio 43616

Bethel Baptist Church
745 N. Freedom Street
Ravenna, Ohio 44266

Bethesda Apostolic Church
209 S. King Road
Holland, Ohio 43528

Bible Baptist Temple
P. O. Box 32005
Euclid, Ohio 44132

Bible Believers Baptist Church
5360 East Center Drive, N. E.
North Canton, Ohio 44721

Calvary Baptist Church
748 S. Gebhart Church Road
Miamisburg, Ohio 45342

Calvary Baptist Church
1123 State Rte. 28
Milford, Ohio 45150

Calvary Baptist Church
21 Washington Street
Shelby, Ohio 44875

Calvary Pentecostal Church
353 W. Kemper Road
Cincinnati, Ohio 45246

Canton Road Baptist Church
1398 Canton Road
Akron, Ohio 44312

Centerville Christian Assembly
175 East Franklin Street
Centerville, Ohio 45459

Christ Gospel Church
250 Home Avenue
Mansfield, Ohio 44903

Christian Assembly
P. O. Box 268
Fremont, Ohio 43420

Church Of God
3770 St. Lawrence Avenue
Cincinnati, Ohio 45205

Church of God
97 E. Main Street
Clarksville, Ohio 45113

Church of God
2701 Jefferson Road
Jefferson, Ohio 44047

Church of God
1332 E. Main Street
Lancaster, Ohio 43130

Church of God
283 Sections Street
LaRue, Ohio 43332

Church of God
7599 S. Center
Mentor, Ohio 44060

Church of God
3595 Edison Avenue
Uniontown, Ohio 44685

Church of God
244 W. South Street
Wooster, Ohio 44691

Cleveland Baptist Church
4431 Tiedeman Road
Cleveland, Ohio 44144

Clyde Missionary Baptist
441 Duane Street
Clyde, Ohio 43410

Columbia Rd. Baptist Church
4116 Columbia Road
N. Olmsted, Ohio 44070

Cozddale Baptist Temple
10632 Eltzroth Road
Goshen, Ohio 45122

Decatur Chapel Church
Rt. 1, Box 155
Little Hocking, Ohio 45742

Eaton Baptist Temple
416 East Decatur Street
Eaton, Ohio 45320

Emmanuel Baptist Temple
329 North Carpenter
Brunswick, Ohio 44212

Euclid Avenue Mission
603 Euclid Avenue
Marion, Ohio 43302

Faith Assembly of God
1213 Leeson Avenue
Van Wert, Ohio 45891

Faith Baptist Church
Defiance
Ohio, 43512 IN

Faith Baptist Church
P. O. Box 648
Williamsburg, Ohio 45176

Faith Baptist Temple
34361 Lorain Road
N. Ridgeville, Ohio 44039

Faith Presbyterian
2540 South Main Street
Akron, Ohio 44319

Fayette Wesleyan Missionary Church
Fayette
Ohio, 43521 IN

Fellowship Baptist Church
Beloit
Ohio, 44609 IN

First Baptist Church
500 Beach Drive
Belpre, Ohio 45714

First Baptist Church
1308 N. Maple Street
Eaton, Ohio 45320

First Baptist Church
745 Center Road
Milford, Ohio 45150

First Pentecostal Church
282 Stelton Road
Xenia, Ohio 45385

Franklin Baptist Church
160 Deardoff Road
Franklin, Ohio 45005

Fremont Baptist Temple
1150 S. CR#198
Fremont, Ohio 43420

Fundamental Baptist Church
2219 Allen-Comp Road
Dorset, Ohio 44032

God's Tabernacle
9254 U. S. 36
Bradford, Ohio 45308

Gospel Baptist Church
6477 Cooper Road
Cincinnati, Ohio 45242

Greenfield Bible Baptist Church
St. Rt. 28 W.
Greenfield, Ohio 45123

Greenville Baptist Temple
203 Warren Street
Greenville, Ohio 45331

Hamilton Church of God
1760 Millville Avenue
Hamilton, Ohio 45011

Harmony Baptist Church
1196 Inman Street
Akron, Ohio 44306

Harvest Temple
144 Lemon Street
Clyde, Ohio 43410

Huber Hts. Baptist Temple
7730 Taylorsville Road
Huber Hts., Ohio 45424

Independent Baptist Church
3583 S.R. #59
Ravenna, Ohio 44266

Liberty Baptist Church
1017 Lake Avenue
Elyria, Ohio 44035

Liberty Baptist Temple
5470 Spfld.-Jamestown Road
Springfield, Ohio 45502

Mansfield Baptist Temple
P. O. Box 2001
Mansfield, Ohio 44095

Maranatha Baptist Church
815 Co. Road 30A
Hayesville, Ohio 44838

Maranatha Baptist Church
77 Saxe Road
Mogadore, Ohio 44260

Montpelier Baptist Church
Brown Road
Montpelier, Ohio 43543

Mt. Hope Baptist Church
P. O. Box 222
Harrison, Ohio 45030

New Carlisle Church of God
595 N. Medway New Carlisle Road
New Carlisle, Ohio 45344

New Covenant Church
4161 Maize Road
Columbus, Ohio 43224

New Life Temple
5922 Prentice Street
Cincinnati, Ohio 45227

Newark Baptist Temple
81 Licking View Drive
Heath, Ohio 43055

Norwalk Baptist Church
99 E. Maine Street
Norwalk, Ohio 44857

Ohio Valley Christian Center
R.D. 1
Steubenville, Ohio 43952

Open Door Baptist Church
301 Franklin Street
Marietta, Ohio 45750

Peoples Baptist Church
3840 Center Road
Brunswick, Ohio 44212

Philadelphia Church of God
2900 Philadelphia Drive
Dayton, Ohio 45405

Pilgrim Holiness Church
N. Main Street
Nevada, Ohio 44849

Prairie Chapel Bible Church
Rt. #2 Co. Rd. 209
Oakwood, Ohio 45873

President Drive Church
of Christ
3671 President Drive
Cincinnati, Ohio 45225

Sharonville Church of God
10830 Sharondale Road
Cincinnati, Ohio 45241

Solon Baptist Temple
7669 SOM Center Road
Solon, Ohio 44139

South Ridge Baptist Church
924 Center Road
Conneaut, Ohio 44030

Sunshine Baptist Church
3649 Bloomfield Road
Cambridge, Ohio 43725

Temple Baptist Church
1420 S. Abbe Road
Elyria, Ohio 44035

Temple Baptist Church
11965 Kenn Road
Springdale, Ohio

The Bible Speaks
3355 Ambert Street
Youngstown, Ohio 44502

Toledo Baptist Church
5732 Douglas Road
Toledo, Ohio 43613

Tree City Baptist Church
4167 State Rte. 43
Brimfield, Ohio 44240

Trimble Road Bible Church
939 W. Cook Road
Mansfield, Ohio 44906

Trinity Baptist Church
7839 CR 236
Findlay, Ohio 45840

Trinity Full Gospel Church
535 Munson Avenue
Zanesville, Ohio 43701

United Apostolic Church
2590 Morse Road
Columbus, Ohio 43229

United Bethel Mennonite
Church
809 Lombard Road
Plain City, Ohio 43064

United Pentecostal Church
200 Snyder Street
Springfield, Ohio 45504

Valley Bible Center
P.O. Box T
Coolville, Ohio 45723

Wesleyan Evangelistic Church
2104 Revere Avenue
Dayton, Ohio 45420

West Broad Missionary Chapel
1245 W. Broad Street
Columbus, Ohio 43222

Westside Church of God
Hamilton
Ohio, 45013 IN

Westwood Baptist
3906 W. Alexis
Toledo, Ohio 43623

Whetstone Baptist Church
994 Poe Road
Bucyrus, Ohio 44820

Wilmington Church of God
198 South Walnut
Wilmington, Ohio 45177

Youngstown Baptist Church
554 South Meridian
Youngstown, Ohio 44509

APPENDIX F

I § 7 Rights of conscience; the necessity of religion and knowledge.

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

II § 35 Workmen's compensation

Note: 1976 S 545, eff. 1-17-77, changed "Workmen's compensation" to "Workers' compensation".

For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made

therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all rights of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease of death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees, enacted by the general assembly, or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by

the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this constitution.

4123.01 Definitions

As used in Chapter 4123 of the Revised Code:

(A) "Employee," "workman," or "operative" means:

(1) Every person in the service of the state, or of any county, municipal corporation, township, or school district therein, including regular members of lawfully constituted police and fire departments of municipal corporations and townships, whether paid or volunteer, and wherever serving within the state or on temporary assignment outside thereof, and executive officers of boards of education, under any appointment or contract of hire, express or implies oral or written, including any elected official of the state, or of any county, municipal corporation, or township, or members of boards of education.

(2) Every person in the service of any person, firm, or private corporation, including any public service corporation, that (a) employs one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, including aliens and minors, household workers who earn one hundred sixty dollars or

more in cash in any calendar quarter from a single household and casual workers who earn one hundred sixty dollars or more in cash in any calendar quarter from a single employer, but not including any officer of a family farm corporation, or (b) is bound by any such contract of hire or by any other written contract, to pay into the state insurance fund the premiums provided by Chapter 4123. of the Revised Code.

Every person in the service of any independent contractor or subcontractor who has failed to pay into the state insurance fund the amount of premium determined and fixed by the industrial commission for his employment or occupation or to elect to pay compensation directly to his injured and to the dependents of his killed employees, as provided in section 4123.35 of the Revised Code, shall be considered as the employee of the person who has entered into a contract, whether written or verbal, with such independent contractor unless such employees or their legal representatives or beneficiaries elect, after injury or death, to regard such independent contractor as the employer.

(3) If an employer is a partnership, sole proprietorship, or family farm corporation, such employer may elect to include as an "employee" within this chapter, any member of such partnership, the owner of the sole proprietorship, or the officers of the family farm corporation. In the event of such election, the employer shall serve upon the commission written notice naming the persons to be covered, include such employee's remuneration for premium purposes in all future payroll reports, and no such

proprietor, or partner shall be deemed an employee within this division until such notice has been served.

(B) "Employer" means:

(1) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state,

(2) Every person, firm and private corporation, including any public service corporation, that (a) has in service one or more workmen or operatives regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by Chapter 4123. of the Revised Code.

All such employers are subject to Chapter 4123. of the Revised Code. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered a workman or operative in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more workmen and the income derived from such labor shall be reported to the industrial commission as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

4123.12 Attachment proceeding to compel obedience

In case any person fails to comply with an order of the industrial commission or subpoena issued by the commission, its secretary, or director of claims, or any of its inspectors, examiners, or claims referees, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, or if any person refuses to permit an inspection, the probate judge of the county in which the person resides, on application of any member of the commission, its secretary, or director of claims, or any inspector, examiner, or claims referee appointed by it, shall compel obedience by attachment proceedings as for contempt, as in the case of disobedience of the requirements of subpoena issued from such court on a refusal to testify therein.

4123.23 Inspection of books, records, and payrolls

All books, records, and payrolls of the employers of the state, showing or reflecting in any way upon the amount of wage expenditure of such employers, shall always be open for inspection by the industrial commission, or any of its traveling auditors, inspectors, or assistants, for the purpose of ascertaining the correctness of the wage expenditure, the number of men employed, and such other information as is necessary for the uses and purposes of the commission in its administration of the law.

Refusal on the part of any employer to submit his books, records, and payrolls for the inspection of any member of the commission or traveling auditor, inspector, or assistant presenting written authority from the commission shall subject such employer to a forfeiture of one hundred dollars for each such offense, to be collected

by civil action in the name of the state, and paid into the state insurance fund.

4123.26 Annual statement by employer; forfeiture

Every employer shall keep records of, and furnish to the industrial commission upon request, all information required by the commission to carry out Chapter 4123. of the Revised Code. In January of each year, every employer of the state employing one or more employees regularly in the same business, or in or about the same establishment, shall prepare and mail to the commission at its main office in Columbus a statement containing the following information:

(A) The number of employees employed during the preceding year from the first day of January through the thirty-first day of December;

(B) The number of such employees employed at each kind of employment and the aggregate amount of wages paid to such employees.

Such information shall be furnished on a blank to be prepared by the commission. The commission shall furnish such blanks to employers free of charge upon request therefor. Every employer receiving from the commission any blank, with directions to fill out the same, shall cause the same to be properly filled out so as to answer fully and correctly all questions therein propounded, and give all the information therein sought, or if unable to do so, he shall give to the commission in writing good and sufficient reasons for such failure. The commission may require that the information required to be furnished be verified under oath and returned to the commission with-

in the period fixed by it or by law. The commission or any member thereof, or any person employed by the commission for that purpose, may examine, under oath, any employer, or the officer, agent, or employee thereof, for the purpose of ascertaining any information which such employer is required to furnish to the commission.

No employer shall fail to furnish to the commission the annual statement required by this section, nor shall any employer fail to keep records of or furnish such other information as may be required by the commission under this section.

Whoever violates this section shall forfeit five hundred dollars, to be collected in a civil action brought against said employer in the name of the state, to be paid into the state insurance fund and become a part thereof.

4123.35 Payments to insurance fund; self-insurers

Except as provided in this section, every employer mentioned in division (B) (2) of section 4123.01 of the Revised Code, and every publicly owned utility shall semiannually in the months of January and July pay into the state insurance fund the amount of premium fixed by the industrial commission for the employment or occupation of such employer, the amount of which premium to be so paid by each such employer to be determined by the classifications, rules, and rates made and published by said commission. Such employer shall semiannually pay such further sum of money into the state insurance fund as may be ascertained to be due from him by applying the rules of said commission, and a receipt or certificate certifying that such payment has been made shall immediately be

mailed to such employer by the commission, which receipt or certificate, attested by the seal of said commission, is prima-facie evidence of the payment of such premium.

The bureau of workers' compensation shall verify with the secretary of state the existence of all corporations and organizations making application on or after the effective date of this section for workers' compensation coverage and shall require every such application to include the employer's federal identification number.

An employer as defined in division (B) (2) of section 4123.01 of the Revised Code who has contracted with a subcontractor shall be liable for the unpaid premium due from any such subcontractor with respect to that part of the payroll of the subcontractor which is for work performed pursuant to the contract with such employer.

Provided, that as to all employers who were subscribers to the state insurance fund prior to January 1, 1914, or who may first become subscribers to said fund in any other month than January or July, the first paragraph of this section providing for the payment of such premiums semiannually do not apply, but such semiannual premiums shall be paid by such employers from time to time upon the expiration of the respective periods for which payments into the fund have been made by them. Provided, that such employers and publicly owned utilities who will abide by the rules of the commission and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, equal to or greater than is

provided for in sections 4123.52, 4123.55 to 4123.62 and 4123.64 to 4123.67 of the Revised Code, and who do not desire to insure the payment thereof or indemnify themselves against loss sustained by the direct payment thereof, may, upon a finding of such facts by the commission, be granted the privilege to pay individually such compensation, and furnish such medical, surgical, nursing, and hospital services and attention and funeral expenses directly to such injured employees or the dependents of such killed employees. The commission may require such security or bond from said employers and publicly owned utilities as it deems proper, adequate, and sufficient to compel, or secure to such injured employees, or to the dependents of such employees as may be killed, the payment of such compensation and expenses, which shall in no event be less than that paid or furnished out of the state insurance fund in similar cases to injured employees or to dependents of killed employees whose employers contribute to said fund, except when an employee of such employer, who has suffered the loss of a hand, arm, foot, leg, or eye prior to the injury for which compensation is to be paid, and thereafter suffers the loss of any other of said members as the result of any injury sustained in the course of and arising out of his employment, the compensation to be paid by such employer and publicly owned utility shall be limited to the disability suffered in the subsequent injury, additional compensation, if any, to be paid by the commission out of the surplus created by section 4123.34 of the Revised Code. Should municipal or other bonds be accepted by said commission as security for said payments, such bonds shall be deposited with the treasurer of state who shall have custody thereof and re-

tain the same in his possession according to the conditions prescribed by the order of said commission accepting the same as security, and the treasurer of state shall retain possession of said bonds until such time as he is directed by said commission as to the manner of his disposition of the same. The commission shall make and publish rules governing the manner of making application and the nature and extent of the proof required to justify such finding of fact by said commission as to granting the privilege to such employers and publicly owned utilities, which rules shall be general in their application, one of which rules shall provide that all employers, including publicly owned utilities, granted the privilege to compensate directly their injured employees and the dependents of their killed employees, shall pay into the state insurance fund such amounts as are required to be credited to the surplus in division (B) of section 4123.34 of the Revised Code. The commission also shall adopt rules: establishing a minimum level of performance as a criterion for granting the privilege to pay compensation directly; fixing time limits beyond which failure of the self-insuring employer to provide for the necessary medical examinations and evaluations may not delay a decision on a claim; establishing the grounds upon which the commission will hold a public hearing to evaluate the program for self-insuring employers and set forth the procedures for revocation of self-insurer status which shall include continued failure to file medical reports bearing upon the injury of the claimant and failure to pay compensation or benefits in accordance with law in a timely manner. The commission may change or modify its findings of fact, or revoke the privilege of such employer or publicly owned utility to pay

compensation direct, if in its judgment such action is necessary or desirable to secure or assure a strict compliance with all the provisions of Chapter 4123. of the Revised Code, referring to the payment of compensation and the furnishing of medical, nurse, and hospital services and medicines and funeral expenses to injured employees and the dependents of killed employees.

The commission shall adopt rules setting forth procedures for auditing the program of employers that are granted the privilege to pay compensation directly. Audits shall be conducted by the bureau of workers' compensation upon a random basis or whenever the bureau has grounds for believing that an employer is not in full compliance with commission rules or Chapter 4123. of the Revised Code. The bureau shall report its findings to the commission.

The administrator of the bureau of workers' compensation shall monitor the programs conducted by self-insuring employers, to ensure compliance with commission requirements and for that purpose, shall develop and issue to employers who pay compensation directly standardized forms for use by the employer in all aspects of the employers' direct compensation program and for reporting of information to the bureau.

The bureau shall receive and transmit to the commission and to the employer all complaints concerning any employer engaged in paying compensation directly to employees. The commission shall maintain a file by employer of all complaints received that relate to the employer. The commission shall evaluate each complaint and take appropriate action.

The commission shall adopt as a rule a prohibition against any employer who is granted the privilege to pay compensation directly from harassing, dismissing, or otherwise disciplining any employee making a complaint which rule shall provide for a financial penalty to be levied by the commission payable by the offending employer.

4123.37 Amenable employer; assessment; hearing

In this section "amenable employer" means an employer subject to division (B) (2) of section 4123.01 of the Revised Code.

If the industrial commission finds that any person, firm, or private corporation, including any public service corporation is, or has been at any time after January 1, 1923, an amenable employer and has not complied with section 4123.35 of the Revised Code the industrial commission shall determine the period during which such person, firm, or corporation was an amenable employer and shall forthwith give notice of such determination to the employer. Within twenty days thereafter the employer shall furnish the industrial commission with the payroll covering the period included in the determination and, if the employer is an amenable employer at the time of the determination, shall pay a premium security deposit for the eight months next succeeding the date of the determination and shall pay into the state insurance fund the amount of premium applicable to such payroll.

If the employer does not furnish the payroll and pay the applicable premium and premium security deposit within the said twenty days, the industrial commission shall forthwith make an assessment of the premium due

from the employer for the period the industrial commission determined the employer to be an amenable employer including the premium security deposit according to section 4123.32 of the Revised Code if the employer is an amenable employer at the time of the determination, basing the assessment upon such information as may be in the possession of the industrial commission.

The industrial commission shall give to the employer assessed written notice of such assessment. Such notice shall be mailed to the employer at his residence or usual place of business by certified mail. Unless the employer to whom said notice of assessment is directed files with the industrial commission within twenty days after receipt thereof, a petition in writing, verified under oath by said employer, or his authorized agent having knowledge of the facts, setting forth with particularity the items of said assessment objected to, together with the reason for such objections, such assessment shall become conclusive and the amount thereof shall be due and payable from the employer so assessed to the state insurance fund. When a petition objecting to an assessment is filed the industrial commission shall assign a time and place for the hearing of the same and shall notify the petitioner thereof by certified mail. When an employer files such a petition the assessment made by the industrial commission shall become due and payable ten days after notice of the finding made at the hearing has been sent by certified mail to the party assessed. An appeal may be taken from any such finding to the court of common pleas of Franklin county upon the execution by the party assessed of a bond to the state in double the amount so found due and ordered paid by the industrial commission conditioned that the said

party will pay any judgment and costs rendered against it for said premium.

When no petition objecting to an assessment is filed or when a finding is made affirming or modifying such an assessment after a hearing, a certified copy of the assessment as affirmed or modified may be filed by the industrial commission in the office of the clerk of the court of common pleas in any county in which the employer has property or in which the employer has a place of business. The clerk, immediately upon the filing of such assessment, shall enter a judgment for the state against the employer in the amount shown on the assessment. The judgment may be filed by the clerk in a loose leaf book entitled "special judgments for state insurance fund." Such judgment shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by law on other judgments rendered for claims for taxes. An assessment or judgment under this section shall not be a bar to the adjustment of the employer's account upon the employer furnishing his payroll records to the industrial commission.

The industrial commission, for good cause shown, may waive a default in the payment of premium where such default is of less than sixty days' duration, and upon payment by the employer of the premium for such period, he and his employees are entitled to all of the benefits and immunities provided by Chapter 4123. of the Revised Code.

4123.54 Compensation in case of injury, disease or death; agreement if work performed in another state; employers temporarily in Ohio

Every employee, who is injured or who contracts an occupational disease, and the dependents of each employee who is killed, or dies as the result of an occupational disease contracted in the course of employment, wherever such injury has occurred or occupational disease has been contracted, provided the same were not purposely self-inflicted, is entitled to receive, either directly from his employer as provided in section 4123.35 of the Revised Code, or from the state insurance fund, such compensation for loss sustained on account of such injury, occupational disease or death, and such medical, nurse, and hospital services and medicines, and such amount of funeral expenses in case of death, as are provided by sections 4123.01 to 4123.94 of the Revised Code.

Whenever, with respect to an employee of an employer who is subject to and has complied with sections 4123.01 to 4123.94 of the Revised Code, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. Such agreement shall be in writing and shall be filed with the industrial commission within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with sections 4123.01 to 4123.94 of the Revised Code, then the employee is entitled to compensation and benefits regardless of

where the injury occurs or the disease is contracted and the rights of the employee and his dependents under the laws of this state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and his dependents under the laws of that state shall be the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of his employment without regard to the place where the injury was sustained or the disease contracted.

If any employee or his dependents are awarded workers' compensation benefits or recover damages from the employer under the laws of another state, the amount so awarded or recovered, whether paid or to be paid in future installments, shall be credited on the amount of any award of compensation or benefits made to the employer or his dependents by the industrial commission.

If an employee is a resident of a state other than this state and is insured under the workers' compensation law or similar laws of a state other than this state, such employee and his dependents are not entitled to receive compensation or benefits under sections 4123.01 to 4123.94 of the Revised Code, on account of injury, disease, or death arising out of or in the course of employment while temporarily within this state and the rights of such employee and his dependents under the laws of such other state shall be the exclusive remedy against the employer on account of such injury, disease, or death.

4123.99 Penalties

(A) Whoever violates section 4123.27 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(B) Whoever violates section 4123.28 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(C) Whoever violates section 4123.50 of the Revised Code is guilty of a minor misdemeanor. Whoever purposely violates such section is guilty of a misdemeanor of the second degree.

(D) Whoever violates section 4123.81 of the Revised Code is guilty of a minor misdemeanor.

(E) Whoever violates section 4123.88 of the Revised Code is guilty of a misdemeanor of the second degree.

(F) Whoever violates section 4123.417 of the Revised Code is guilty of a misdemeanor of the second degree, and the persons who shall have paid a fee, compensation, or gratuity as prohibited by section 4123.417 of the Revised Code may recover by civil action three times the amount thereof, together with a reasonable attorney fee, from the person to whom said sum was paid or given.